Gary Yuen & Tan v Diana Ann Seah & Anor

HIGH COURT (KUALA LUMPUR) — ORIGINATING MOTION NO R2–25–58 OF 1998
AZMEL J
18 JANUARY 1999

Labour Law *— Industrial Court — Award — Application to quash — Award based on facts — Whether High Court should interfere with award*

The first respondent was appointed by the applicant — a legal firm — as a legal assistant. Her service however was subsequently terminated by the applicant, giving her one month's notice. No reasons were given for the termination. The first respondent made representations to the relevant authorities and the matter was then referred to the Industrial Court. The Industrial Court — after considering various allegations submitted by the applicant as the reasons justifying the termination — held that the termination was a dismissal without just cause or excuse and awarded compensation to the first respondent. Consequently, the applicant applied to quash the award.

Held, dismissing the application with costs:
In its award, the Industrial Court had thoroughly considered the allegations of wrongdoings against the first respondent by the applicant and arrived at the conclusion that none of these allegations had merit. Since the conclusion arrived at by the Industrial Court was purely based on facts, this court should not disturb such conclusion as the reasons which the Industrial Court had arrived at were not adverse or perverse (see p 468C).

[Bahasa Malaysia summary

Penentang pertama telah dilantik oleh pemohon — sebuah firma guaman — sebagai seorang pembantu guaman. Walau bagaimanapun, perkhidmatannya kemudiannya ditamatkan oleh pemohon, yang memberikannya notis sebulan. Tiada sebab telah diberikan untuk penamatan. Penentang pertama telah membuat representasi kepada pihak berkuasa yang relevan dan perkara tersebut dirujuk kepada Mahkamah Perusahaan. Mahkamah Perusahaan — setelah menimbang pelbagai tohmahan yang diberikan oleh pemohon sebagai alasan bagi menjustifikasikan penamatan tersebut — memutuskan bahawa penamataan tersebut adalah pemecatan tanpa sebab atau alasan yang munasabah dan mengawardkan pampasan kepada penentang pertama. Berikutnya, pemohon membuat permohonan untuk membatalkan award tersebut.

Diputuskan, menolak permohonan dengan kos:
Dalam awardnya, Mahkamah Perusahaan telah menimbang secara teliti tohmahan berkenaan kesalahan terhadap penentang pertama oleh pemohon dan mencapai kesimpulan bahawa tidak satu pun

A daripada tohmahan ini mempunyai merit. Memandangkan kesimpulan yang dicapai oleh Mahkamah Perusahaan adalah semata-matanya berdasarkan fakta, mahkamah ini tidak harus mengganggu kesimpulan sedemikian kerana alasan-alasan yang diberikan oleh Mahkamah Perusahaan tidak bertentangan atau serong (lihat ms 468C).]

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Notes

For cases on award of the Industrial Court generally, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 919–934.

C

Legislation referred to

Industrial Relations Act 1967 s 20

P Jayasingam (*Albar Zulkifly & Yap*) for the applicant.
K Nadarajah (*K Nadarajah & Partners*) for the first respondent.

D

Azmel J: The applicant in this case, a legal firm, had applied for an order of certiorari to quash the award of the Industrial Court Award No 248 of 1998 dated 20 May 1998.

The facts of the case are as follows. The first respondent was appointed by the applicant as a legal assistant with effect from 1 April 1995. In the letter of appointment, it was stated under cl 11 that either party could terminate the agreement by giving one month's notice to the other party. By invoking this cl 11, the first respondent was terminated by the applicant on 31 March 1996 giving her one month's notice. No reasons were given for the termination. Even though the first respondent requested for the reasons, the applicant refused to give her the reasons for the termination. Consequently, the first respondent made representations to the Industrial Relations Department under s 20 of the Industrial Relations Act 1967. The matter was then referred to the Industrial Court for an award.

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At the hearing before the Industrial Court, the applicant stated that the reasons for the termination of the services of the first respondent were:

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> ... On the ground of failure to adhere to instructions, habitually coming to work late, absence from work without valid reasons, misrepresentations to the company, dishonesty to the company, breach of fidelity and good faith and failure to exercise the degree of care reasonably expected of a person of the claimant's skill, knowledge and competence.

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The Industrial Court, at the conclusion of the hearing, held that the termination of the first respondent was a dismissal without just cause or excuse. Instead of ordering a reinstatement to her former job which it considered to be not conducive, the Industrial Court awarded compensation to the first respondent in the sum of RM135,000 to be paid by the applicant. It was against this award that this application was made by the applicant.

I

In its award, the Industrial Court had considered thoroughly the allegations of wrong-doings against the first respondent by the applicant,

namely her failure to attend two court cases; her act of filing in documents at the wrong forum; her giving wrong advice to foreign purchasers in respect of landed property; making defective charge documentation in favour of EON Bank; her habitual lateness in coming to office and failure to follow instructions; and breach of fidelity, misrepresentation and dishonesty. This last allegation was considered by the Industrial Court to be the most serious of all the charges levelled against the first respondent.

As I have said earlier, the Industrial Court had considered each and every allegation against the first respondent and arrived at the conclusion that none of these allegations had merit. The Industrial Court had given its reasons for arriving at the conclusion that the allegation had no merit. Such conclusion arrived at by the Industrial Court was purely based on facts. I do not think that I should disturb such conclusion as the reasons on which the Industrial Court had arrived at was not adverse or perverse. As a matter of fact, I wish to commend the Industrial Court for giving a thorough consideration of the allegations and stating convincing reasons in arriving at its conclusion. Taking the whole circumstances of this case, I must agree completely with the finding of the Industrial Court that the termination of the first respondent was an act of victimisation committed by the applicant. It was done without just cause or excuse. In addition, the termination was arbitrarily made in violation of the principles of natural justice. Being a legal firm, expected to be conversant with law, the applicant's failure to dismiss an employee in violation of the principles of natural justice was very undesirable and uncalled for.

The applicant in alleging that the Industrial Court had committed various errors of law in arriving at the conclusion that the termination was without just cause or excuse gave eight grounds as mentioned in its statement made under O 53 r 1(2) Rules of the High Court 1980. Sad to say that all the grounds are concerned with questions of facts. This is not an appeal from the decision of the Industrial Court. This is an exercise of judicial review which cannot be equated with that on an appeal. As I have mentioned earlier, courts would be very slow in disturbing any finding of facts unless the conclusion arrived at by the court is so absurd that no reasonable person can accept it. In this case, I was unable to find anything to say that the Industrial Court had arrived at an absurd conclusion which in law can be regarded as having acted in excess of jurisdiction.

On this issue of quantum of compensation awarded by the Industrial Court to the first respondent amounting to RM135,000 which included backwages for a period of 24 months and compensation for loss of employment for a period of three years (being the ninth ground of allegation put up by the applicant), I was fully satisfied that the Industrial Court in arriving at that amount of compensation had made use of correct principles as stated in its award. As such, I do not think it would be proper to disturb it.

In the circumstances of the case, I dismissed the application with costs.

Application dismissed with costs.

Reported by Loo Lai Mee